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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,714	08/24/2005	Andrea Duddington	102792-429(11038P1)	8542
27389	7590	08/05/2010	EXAMINER	
PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			LOVE, TREVOR M	
			ART UNIT	PAPER NUMBER
			1611	
			MAIL DATE	DELIVERY MODE
			08/05/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,714	Applicant(s) DUDDINGTON ET AL.	
	Examiner TREVOR M. LOVE	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-47 is/are pending in the application.
- 4a) Of the above claim(s) 45-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 31-47 are pending.

Claims 45-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05/13/2010.

Claims 31-44 are currently under consideration.

Withdrawn Rejections

The rejection of claims 1-2,4-5,10-15,24-28, and 30 under 35 U.S.C. 103(a) as being unpatentable over Michael (US Patent No. 5,540,864 ; Issued Jul.30,1996) is withdrawn in view of Applicant's cancellation of said claims.

The rejection of claim 3 under 35 U.S.C. 103(a) as being unpatentable over Michael (US Patent No. 5,540,864; Issued Jul.30,1996) as evidenced by Dangman, .et al(US patent No. 5,335,373; Issued Aug. 9, 1994), as applied to claims 1-2 above, and further in view of Scepanski (US Patent No. 5,977,183; Issued Nov.2,1999) is withdrawn in view of Applicant's cancellation of said claims.

The rejection of claims 16-21 under 35 U.S.C. 103(a) as being unpatentable over Michael (US Patent No. 5,540,864 ; Issued Jul.30,1996), as applied to claim 1-2 above, and further in view of Bischof et al.(US patent No. 4,666,940; issued May 19,1987), Jan.6, 1976) is withdrawn in view of Applicant's cancellation of said claims.

New Grounds of Rejection

Claim 32 is objected to because of the following informalities: Claim 32 recites “[...] wherein one or the organic acids or salt thereof [...]” (emphasis added). Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

Art Unit: 1611

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 31-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villars et al (U.S. Patent number 5,691,287, Patent issued Nov. 25, 2997) in view of Lopes (U.S. PreGrant Publication number 2002/0039981).

Villars teaches a cleansing composition comprising from about 20 to about 35% of sodium cocoyl isethionate and a buffer for adjusting the pH of the composition to be in a range from about 4.0 to about 5.5 (see entire document, for instance, Abstract). Villars teaches that sodium cocoyl isethionate is a surfactant (see entire document, for instance, column 7, lines 60-65). Villars teaches that "[p]referred examples of buffers include sodium lactate, lactic acid, citric acid and sodium citrate. We vary their individual levels to achieve out target pH range" (see column 5, lines 54-57). Lactic acid and sodium lactate are exemplified as being present as 3.8% of all ingredients in the formula (see entire document, for instance, Table 1C, all seven formulae and Example 1). Example 1 also exemplifies the presence of an antimicrobial (biocidal) component, namely sorbic acid FCC (see column 11, lines 1-40).

Villars fails to directly exemplify the use of all four buffers in a single example.

Lopes teaches a surface sanitizing composition comprising acidifying agents (see Title). Said acidifying agents are taught as being useful for keeping the pH of the solution below 5 (see entire document, for instance [0025]). Lopes teaches that "[t]ypically two or more acids will be employed in combination with one another" (see

Art Unit: 1611

[0025]). Preferred combinations of acidifying agents include lactic, phosphoric, and citric acids. Most preferably all three are utilized (see entire document, for instance, [0026]). Lopes further teaches that the sanitizing composition further comprises sequestering or chelating agents. Said agents include sodium citrate (see entire document, for instance, [0048]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize all four buffers (sodium lactate, lactic acid, citric acid and sodium citrate) as taught in Villars. One would have been motivated to do so since Villars exemplifies lactic acid and sodium lactate and further teaches that sodium lactate, lactic acid, citric acid, and sodium citrate can all be used as buffers, wherein Lopes teaches that citric acid is useful in combination with lactic acid as a buffer to keep the pH of the composition below 5. Further, Lopes teaches that sodium citrate is useful as a sequestering/chelating agent in sanitizing compositions. One would have been motivated to utilize additional buffering agents (such as citric acid) since Lopes teaches that combinations which include citric acid and lactic acid are preferred, wherein there would be a reasonable expectation of success since Villars teaches that both citric acid and lactic acid are useful buffering agents in the composition of Villars. Further since the composition of Villars is a soap composition, one would have been motivated to utilize sodium citrate for the added advantage of a sequestering/chelating agent (as taught by Lopes). There would be a reasonable expectation of success since Villars teaches that both sodium citrate and sodium lactate are useful buffering agents in the composition of Villars. Further, since all four components are taught in Villars as

Art Unit: 1611

buffers, it would additionally have been obvious to utilize them all in combination since MPEP 2144.05 states: “It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.” *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980) (citations omitted). See also *In re Crockett*, 279 F.2d 274, 126 USPQ 186 (CCPA 1960); and *Ex parte Quadranti*, 25 USPQ2d 1071 (Bd. Pat. App. & Inter. 1992).

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Villars et al (U.S. Patent number 5,691,287, Patent issued Nov. 25, 1997) in view of Lopes (U.S. PreGrant Publication number 2002/0039981) as applied to claims 31-43 above, and further in view of Simmons (U.S. Patent number 1,709,411, Patent issued Apr. 16, 1929).

The teachings of Villars and Lopes are set forth above, wherein it is further noted that Villars teaches that “it is envisioned that the composition may instead be used in a semi-solid form such as a paste or cream, for example. Such a composition could be made by increasing the amount of water and lowering the amount of SCI, for example” (see column 16, lines 44-49).

Villars fails to directly teach that the composition is in a package with a restricted dispenser outlet under the control of a user.

Art Unit: 1611

Simmons teaches a dispenser for creams and the like (see entire document, for instance, Title). Simmons further teaches that the "object of the invention is to provide an improved simple, comparatively-inexpensive, decorative, easily understood and operated fixture or accessory for the bathroom [...] for dispensing in a cleanly sanitary manner, various paste-like creams, such as cream soap" (see page 1, lines 15-21). Simmons further teaches that the cream is caused to leave the dispenser "as pressure is externally applied by the fingers or hand to the upper or storage body of the container" (see page 1, lines 80-83).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a package of the composition of Villars and the dispenser of Simmons. One would have been motivated to do so to allow for the paste or cream of Villars to be delivered in a simple, comparatively-inexpensive, and easy to understand way. There would be a reasonable expectation of success since the fixture of Simmons was made to deliver paste or cream soaps such as those of Villars. Further, the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). "Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." 325 U.S. at 335, 65 USPQ at 301.).

Conclusion

No claims allowed. All claims rejected. No claims objected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TREVOR M. LOVE whose telephone number is (571)270-5259. The examiner can normally be reached on Monday-Thursday 7:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TL

/David J Blanchard/
Primary Examiner, Art Unit 1643